STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0903

John Moon,
Appellant,

vs.

Mark F. Schultz, et al.,
Respondents.

Filed January 17, 2023
Reversed
Connolly, Judge

Chippewa County District Court
File No. 12-CV-20-653

Matthew B. Gross, Quarnstrom & Doering, P.A., Marshall, Minnesota (for appellant)

Douglas D. Kluver, Kluver Law Office, Montevideo, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Following a bench trial on respondent-landowners' claims related to damage to their trees and crops, appellant-adjoining-landowner argues that the district court (1) abused its discretion in awarding damages in favor of respondents; (2) erred in finding that treble damages under Minn. Stat. § 548.05 (2022) were applicable; (3) abused its discretion by admitting the testimony of respondents' expert witness; and (4) abused its discretion in

denying appellant's motion for a new trial. Because the district court abused its discretion in awarding damages to respondents, we reverse.

FACTS

Appellant John Moon and respondents Mark Schultz (Schultz) and Mary Pepka-Schultz are the record owners of adjoining parcels of real property located in Sparta Township, Chippewa County. Respondents' property consists of pastureland and appellant's property is cropland. The south side of respondents' property adjoins the north side of appellant's property, and there has traditionally been a fence line along the boundary between the parties' properties. Appellant had previously installed fences along the boundary line in 1993 and 2017, but both fences were removed.

In September 2017, appellant replaced the existing fence along the parties' property line. In doing so, appellant entered respondents' property and cut down several elm trees. The trees fell onto respondents' soybean field, damaging some of the crops. Respondents later sued appellant for damages related to the destroyed trees and crops.[1]

A bench trial was held in December 2021, at which Schultz testified that two acres of his soybean crop were damaged as a result of the trees falling on his crop land. Schultz also testified that he calculated his damages for the destroyed crops by relying on price information obtained from his crop insurance, which showed an average yield of 58 bushels of soybean per acre. Schultz then explained his calculation of damages: "It's [58] bushels

[1] The parties are also the record owners of separate adjoining parcels of real property in Chippewa County. Although the parties' lawsuit also involved land-use issues related to an easement on those parcels of property, those issues are not before us in this appeal.

per acre at two acres equals 116 bushels times the guarantee of $10.19 for a total of $1,182.04." According to Schultz, the price information, which he received in January 2018, is determined by the market.

With respect to his damaged trees, Schultz claimed that the trees had special aesthetic value because "[t]here was one tree in there that was kinda special to me because . . . I had trimmed it a couple times and was hoping that I could use it for a deer stand in . . . the future." But Schultz admitted that his land did not decrease in value as a result of appellant damaging the trees.

Duane Hastad testified that he operates a nursery and landscaping business and that his duties in his line of work include providing estimates for the value of foliage. Hastad also testified that Schultz asked him to conduct a valuation for the damage to his trees. Schultz provided Hastad pictures of his damaged trees, the number of trees that were damaged, the location of the trees, and the size of about a third of the damaged trees. After being provided this information, Hastad concluded that the replacement value of the trees was $9,500 to $12,500. In reaching his conclusion, Hastad admitted that he "consulted" another individual because "he's a lot more familiar with [this] type of procedure and [the individual has] been doing this for [65] years, so he's kinda a mentor and I trust his valuation of trees." And Hastad acknowledged that a "tree being on a tree line would probably not have as much value as a tree in your front yard."

Appellant moved to disqualify Hastad as an expert witness. The district court denied the motion, concluding that Hastad's "qualifications provide sufficient foundation for the opinions and the comments really go to the weight to be given rather than whether

the opinions are admissible." Appellant then testified that he cut down the trees because they were in his fence line. And according to appellant, the fallen trees were Chinese elm trees, which are "bushy," "short lived, weed-type tree[s]," that have a "negative value" because they grow fast and expand out, creating shade over crops causing them not to grow.

The district court found that appellant felled 19 elm trees on respondents' property and that the replacement value of the trees is $9,500. The district court also found that the felled trees caused $1,182.04 in damage to respondents' soybean crop. And the district court determined that treble damages were applicable under Minn. Stat. § 548.05. Thus, the district court awarded damages in favor of respondents in the amount of $32,046.12 related to appellant's trespass and damage to respondents' trees and soybean crop.

The parties moved for amended findings of fact, conclusions of law, order for judgment and judgment. Appellant also filed an alternative motion for a new trial. The district court denied the motions. This appeal follows.[2]

DECISION

Appellant challenges the district court's decision awarding damages to respondents for their (A) damaged trees, and (B) destroyed soybean crop. This court reviews a district court's award of damages for an abuse of discretion, *Gabler v. Fedoruk*, 756 N.W.2d 725, 734 (Minn. App. 2008), and the district court's findings concerning damages awarded on court-tried claims are reviewed for clear error, *Rasmussen v. Two Harbors Fish Co.*, 832

[2] Respondents did not file a brief in this appeal and this court ordered that the matter proceed pursuant to Minn. R. Civ. App. P. 142.03 (providing that, if respondent fails to file a brief, the case shall be determined on the merits).

N.W.2d 790, 797 (Minn. 2013). "[W]e examine the record to see if there is reasonable evidence . . . to support the [district] court's findings" and "view the evidence in the light most favorable to the verdict." *Id.* (quotation omitted). But whether the district court used the proper measure of damages is a legal issue that is reviewed de novo. *Magnuson v. Cossette*, 707 N.W.2d 738, 744 (Minn. App. 2006).

A. Damaged trees

"It has long been the rule in this state that the measure of damages for destruction of trees and shrubbery is the difference between the value of the land before and after the damage has been inflicted." *Baillon v. Carl Bolander & Sons Co.*, 235 N.W2d 613, 614 (Minn. 1975). Where the destroyed trees were small, ill-formed, and used to prevent erosion or reduce noise, the proper measure of damages was diminution of land value. *Id.* at 615. But where the destroyed trees had substantial value for shade and ornamental purposes, had aesthetic value, and were used as a sound barrier and a screen from traffic, replacement cost was the proper measure of damages. *Rector, Wardens & Vestry of St. Christopher's Episcopal Church v. C.S. McCrossan, Inc.*, 235 N.W.2d 609, 610 (Minn. 1975).

Here, the district court found that appellant cut down 19 elm trees, and that the "trees had trunk radiuses ranging from 2 inches to 12 inches." But the district court made no further findings related to the proper measure of damages. Instead, the district court simply found that the replacement value of respondents' damaged trees is $9,500.

Appellant argues that the replacement value of the trees is the wrong measure of damages because there is no evidence in the record indicating that respondents' damaged

trees were the type of tree that had substantial value for shade and ornamental purposes, had aesthetic value, and were used as a sight and sound barrier. We agree. Our review of the record indicates that the fallen trees were small and ill-formed, with little or no aesthetic value. The trees were situated along a fence line between appellant's pastureland and respondents' cropland, and there is no indication that the fallen trees had any shade or aesthetic value, or were used as a sound or sight barrier. In fact, the record indicates that the fallen trees were on a parcel of property that was not visible from respondents' house.

Moreover, Hastad testified that he believed the trees were likely wild elm trees that grew along a tree line and "would probably not have as much value as a tree in your front yard." Appellant echoed Hastad's testimony, claiming that the fallen trees were Chinese elm trees, which are "bushy," "short lived, weed-type tree[s]," that have a "negative value" because they grow fast and expand out, creating shade over crops causing them not to grow. Schultz did not dispute Hastad's or appellant's descriptions of the fallen trees. Instead, he claimed that one of the fallen trees "was kinda special to me because . . . I had trimmed it a couple times" and "was hoping to be able to have it for a deer stand at some time in my life." But Schultz's desire to perhaps use one of the trees as a deer stand "at some time in [his] life" does not support a finding that the replacement value of the trees is the proper measure of damages. Rather, the record is devoid of any evidence demonstrating that the fallen trees had substantial value for shade and ornamental purposes, had aesthetic value, or were used as a sound and sight barrier. Therefore, we conclude that the district court erred in using replacement cost as the measure of damages in this case.

Appellant also contends, that because the district court erred by using replacement cost as the measure of damages, the applicable measure of damages is diminution of value. Appellant claims that, "[i]n applying the diminution in land value measure of damages, the record is clear that Respondents' land did not decrease in value as a result of the damage to Respondents' trees." Thus, appellant contends that respondents are not entitled to any damages related to their fallen trees.

Again, we agree. The record reflects no pleading or arguments by respondents related to diminution of land value. Rather, respondents' claim for damages related to the fallen trees focused solely on the replacement value of the trees. Moreover, there was no evidence presented at trial related to diminution of land value. In fact, Schultz testified that he did not know the value of his land in 2017, when the trees were damaged. And, more importantly, Schultz acknowledged that his land did not decrease in value as a result of appellant damaging the trees. Because Schultz admitted that the value of his land was not damaged by appellant's actions, respondents are not entitled to any damages for the fallen trees. Accordingly, the district court abused its discretion in awarding damages to respondents related to the fallen trees.

B. Damaged soybean crop

Appellant also contends that the district court abused its discretion in awarding damages to respondents for their damaged soybean crop. The measure of damages for destruction or injury to growing crops is the value of the crops as they were standing at the time and place of their destruction. *Poynter v. County of Otter Tail*, 25 N.W.2d 708, 715 (Minn. 1947). As the supreme court has explained, the "valuation of crops . . . based upon

the assumption that they will mature and be harvested may differ considerably from valuation of such crops as they stand in the fields in the early part of the growing season." *Id.*

Here, Schultz testified that two acres of soybean crop were damaged as a result of the trees falling on his crop land. Schultz also testified that he calculated his damages for the destroyed crops by relying on price information obtained from his crop insurance. This information, submitted as exhibit 114.1, shows an average yield of 58 bushels of soybean per acre. Schultz then explained his calculation of damages as follows: "It's [58] bushels per acre at two acres equals 116 bushels times the guarantee of $10.19 for a total of $1,182.04." According to Schultz, the price-guarantee information of $10.19 is determined by the market, which he received in January 2018, and depicted the market value as of that time.

In awarding damages to respondents for their destroyed soybean crop, the district court apparently adopted Schultz's testimony, finding that "[t]wo acres worth of soybeans were damaged, resulting in a loss of 58 bushels. The total amount of damages to the soybeans was $1,182.04." The district court then awarded treble damages for the destroyed soybeans in the amount of $3,546.12. But the district court made no findings supporting its determination that the total amount of damages to respondents' soybeans was $1,182.04, nor did the court engage in any legal analysis to arrive at its measure of damages.

Appellant argues that the district court abused its discretion in awarding damages to respondents for the destroyed soybean crop because "there is no evidence in the record of the value of Respondents' soybean crops at the time they were damaged or destroyed." We

agree. Respondents' soybean crop was damaged in September 2017, and there is no evidence in the record of the value of the soybean crop as of that time. Instead, the only evidence submitted by respondents depicts the value of two acres of soybeans *after* being harvested, based on an assumed per-acre yield and the market value of a bushel of harvested soybeans. The supreme court has clearly stated that the measure of damages for destruction or injury to growing crops is the value of the crops as they were standing at the time and place of their destruction. *Poynter*, 25 N.W.2d at 715. Without evidence of the value of the damaged soybean crop as of September 2017, respondents failed to meet their burden to show the value of the damaged crop under the appropriate measure of damages set forth in *Poynter*. As such, the district court abused its discretion in awarding damages to respondents for the destroyed soybean crop.

Appellant also contends that the district court erred in awarding treble damages under Minn. Stat. § 548.05. But we need not address this argument because we have concluded that the award of any damages was error and, therefore, there are no damages to treble. And because we reverse the district court's award of any damages, appellant's remaining arguments are moot, and they need not be addressed.

Reversed.